

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA GAS COMPANY for authority to update its gas revenue requirement and base rates. (U 904 G)	Application 02-12-027 (Filed December 20, 2002)
Application of SAN DIEGO GAS & ELECTRIC COMPANY for authority to update its gas and electric revenue requirement and base rates. (U 902-M)	Application 02-12-028 (Filed December 20, 2002)
Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Gas Company and San Diego Gas & Electric Company.	Investigation 03-03-016 (Filed March 13, 2003)

**RULING CLARIFYING THE SCOPING MEMO AND
MODIFYING THE SCHEDULE**

1. Summary

Pursuant to Article 2.5 of the Rules of Practice and Procedure (Rules), and following the second prehearing conference (PHC-2) held on March 14, 2003, the Assigned Commissioner issued a "Scoping Memo" on April 2, 2003, addressing the scope, schedule, and related matters in Southern California Gas Company's (SoCalGas) test year 2004 Cost of service case (COS) and San Diego Gas & Electric Company's (SDG&E) test year 2004 COS. SoCalGas and SDG&E filed a motion seeking relief from various aspects of the scoping memo. This ruling, which is discretionary, modifies the schedule and addresses other issues to the extent allowable by the Commission's rules. Three parties, the Office of ratepayer Advocates (ORA), The Utility reform Network (TURN), and the Utility

Consumers' Action Network (UCAN), filed responses to the motion on May 5, 2003.

2. April 18, 2003 Motion by SoCalGas and SDG&E

The moving parties seek three things:

1. Interim rates effective January 1, 2004, subject to refund, because the adopted procedural schedule does not foresee a decision before January 1, 2003. In the alternate, tracking accounts for the revenue shortfall.
2. Modification of the scoping memo to eliminate the requirement for supplemental testimony as described in the scoping memo.
3. Modification of the schedule as adopted in the scoping memo to shorten time for the ORA to file testimony on COS issues.

3. Responses to Motion

On May 5, 2003, ORA, TURN, and UCAN filed timely responses. All three responded to the issues of interim rate relief, schedule changes, and modifications to the scope of the proceedings. As stated elsewhere, this Ruling will not address interim relief and the responses of the parties on that issue are not considered here. ORA argues that only the categorization of the proceeding can be appealed. We agree, but chose to address the motion to provide clarification.

4. Rule 65 Rulings

Under the Commission's Rule 65 there is no provision for interlocutory appeals save the discretion for "extraordinary circumstances" where Rule 65

allows that the presiding officer “may refer the matter”.¹ Rulings are effectively upheld or reversed by the decision of the Commission at the end of a proceeding, and not by piecemeal review during the course of the proceeding. Decision (D.) 87070, dated March 9, 1977, in Case No. 5436 (81 CPUC 389, 390.) held that “there is no appeal from a procedural or evidentiary ruling of a presiding officer prior to consideration by the Commission of the entire merits of the matter”.

UCAN, in its response, also argues that the motion is an improper interlocutory appeal that is not provided for by the Commission’s rules of practice and procedure. This is true, but the Assigned Commissioner may elect to consider the motion to provide clarification, and may elect to refer the relevant portion on interim rate relief to the full Commission. The Assigned Commissioner, under the Commission’s rules, is not obliged to respond to the motion, and does so here in the interest of providing clarification to the scoping memo.

Within his own discretion the Assigned Commissioner, in this instance, is ruling in order to provide clarification of the scope and a slight modification to the schedule of the proceeding as already established in the April 2, 2003 Scoping Memo.

5. Interim Rate Relief

In the motion the utilities request:

¹ Rule 65 Rulings. The presiding officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the Commission in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the Commission is necessary to promote substantial justice, the presiding officer may refer the matter to the Commission for determination.

"... that the Commission issue a decision in these consolidated applications authorizing them (applicants) to put into effect, subject to refund, an interim increase in their rates equal to 80% of the increase in rates they have requested in the instant applications. This increase would be effective from January 1, 2004, until the effective date of rates adopted in a decision on cost of service, which under any circumstances is now certain to be issued after the start of the test year in 2004. If the Commission eventually authorized an increase of less than the interim increase, the difference collected from January 1, 2004, would be refunded to customers." (Motion, page 2.)

The Assigned Commissioner and Administrative Law Judge (ALJ) cannot grant interim relief by Ruling. Accordingly, after considering responses from interested parties to the Motion, if it is deemed appropriate, the Assigned ALJ will prepare a proposed decision for the Commission's consideration on the issue of interim rate relief.

ORA argues that the portion of the motion seeking interim relief, and the portion seeking scope and schedule changes, are required to be separate requests under Rule 2.1(b). As filed by SoCalGas and SDG&E, the requested interim relief is directly attributed to the scoping memo's schedule, and as such, the motion does not violate Rule 2.1(b).

We extend the time for parties to reply to this issue only to June 3, 2003 in order to ensure that parties have a reasonable time to prepare any comments. Among other things, we seek comment on the need for developing a record to assess the applicants' assertion of circumstances supporting interim relief as well as the appropriate means for determining what level of relief, if any, should be granted. The applicants ask for interim relief reflecting 80% of the proposed rate increase. How should the Commission determine whether this or any other specific level of relief is appropriate, and how should the Commission take into account the positions of other parties?

6. Schedule

SoCalGas and SDG&E state that their proposed schedule as filed in the applications is based on the Commission's Rate Case Plan schedule. Their proposal would have required the ORA to serve its testimony on April 21, 2003. ORA proposed at PHC-2 to provide its cost of service testimony on August 8, 2003 and incentive ratemaking testimony on November 3, 2003. At PHC-2, several parties stated their support for ORA's proposed schedule. SoCalGas and SDG&E believe that the Commission should proceed according to its proposed schedule. The scoping memo determined that the need to provide ORA with adequate time to prepare its case outweighs our interest in completing the processing of this case under SoCalGas and SDG&E's proposed schedule.

Accordingly, a schedule was adopted for ORA's cost of service related testimony to be served on August 8, 2003. In the motion, SoCalGas and SDG&E assert the scoping memo:

“...adopts a procedural schedule that would not have the final brief (on all issues, without bifurcation) in the case filed until January of 2004. Allowing time for the PD (proposed decision) and any Alternates to be drafted, for the minimum 30 day comment-and-review period, and for Commission consideration of the PD 1 Alternates, it is clear that the schedule in the Scoping Memo would not permit a decision to be issued any time before well into the second quarter of 2004. The upshot of the Scoping Memo is that the utilities will not have a reasonable opportunity in 2004 to earn the rate of return the Commission has found necessary to attract capital needed to serve customers.

And, further:

"The Scoping Memo can and should be modified in two ways to mitigate the impact of a delay in a decision past the beginning of the test year. First, the procedural schedule should be modified to allow for a decision on cost-of-service issues as early in 2004 as possible, although it appears that there is no longer any chance a decision can be issued prior to the beginning of 2004."

SoCalGas and SDG&E propose that the Commission can accomplish this by:

"...fully bifurcating these issues, (cost of service and incentives) the Commission can reduce hearing and briefing time, the time to prepare a PD, and the time needed to vote out a decision on cost-of-service issues. SoCalGas and SDG&E are not proposing at this time a specific schedule for the "incentive" or "PBR" issues in the applications, they do need to be processed on a schedule that allows for a decision before the end of 2004, and as early in 2004 as is reasonably feasible without interfering with issuing a decision on 2004 cost-of- service."

All three parties in their responses are opposed to the schedule modifications sought by SoCalGas and SDG&E. ORA argues that it needs the time allowed in the original schedule to prepare a thorough case. Both TURN and UCAN support the original schedule, and all three parties agree to the deferral of the incentives issue to a second phase. As discussed elsewhere, the Ruling modifies the schedule without shortening ORA's initial deadline but does bifurcate the incentives issue to later in the schedule.

It is not reasonable to adopt a schedule that materially undercuts ORA's capacity to perform its review of the applications, and thus effectively represent ratepayer interests. Applicants implicitly complain that the scoping memo is somehow unfair and that it "failed to adopt any compromise between Applicants' proposal that ORA's testimony be served May 16 and ORA's position that its cost of service testimony should not have to be served until August 8. Our goal, of course, is not to achieve a compromise, but to develop the most effective and efficient schedule for the proceedings. Many of the parties at both PHC-1 and PHC-2 cited the same time and schedule constraints as ORA, with nearly concurrent cases for Southern California Edison Company, and Pacific Gas & Electric Company, affecting the availability of their expert staff.

SoCalGas and SDG&E in their motion argue at page 11 that the scoping memo "is oblivious to the impact of its (sic) schedule on utility earnings." Without engaging on the issue of interim rate relief, or whether SoCalGas and SDG&E should have any reasonable expectation of new rates to be effective on January 1, 2004, we understand that in anticipation of the requested rate increases, the utilities would like those increases in-place as soon as possible. Without harming due process, we are prepared to modify the schedule, but without accelerating ORA's service date for testimony on COS issues and so avoid adversely affecting the completeness or quality of the analysis. To accomplish this we defer, as proposed by SoCalGas and SDG&E, the "incentives" portion of the applications to a later phase after the Commission decides the 2004 test year COS issues. We will speed-up the COS phase by reducing the time for parties to prepare rebuttal and briefs, and the time for the ALJ to draft a proposed decision.

The procedural schedule set forth in Appendix A is hereby adopted for these proceedings. The Assigned Commissioner or the ALJ may modify the schedule as necessary.

7. Supplemental Testimony

Applicants argue in the motion that the directive for supplemental testimony is unnecessary² and the time for that showing delays the schedule. The scoping memo provided the applicants the opportunity to supplement and

².. "SoCalGas and SDG&E move that the Scoping Memo be modified to eliminate its requirements for them to serve on June 16 supplemental testimony in certain areas. Almost all of the areas in which the Scoping Memo orders supplemental testimony to be served by applicants are either already covered by testimony filed by applicants with their applications on December 20, 2002". (Motion, pages 1-2.)

expand the showing of their case-in-chief prior to litigation in hearings. UCAN's response proposes that SoCalGas and SDG&E could be relieved of the obligation to make the supplemental filing required by the Scoping Memo with formal notice "that Movants will not be afforded an opportunity to present additional evidence on these issues later in the proceeding." ORA's response states that it supports SoCalGas and SDG&E's position on the scoping memo changes except for the Customer Service Satisfaction and Incentives issues. As discussed elsewhere, the Ruling provides clarification and some specific modifications on all of the points raised by SoCalGas and SDG&E. ORA did not otherwise explain why it supported SoCalGas and SDG&E's requests.

We intend to let the date stand as scheduled so that SoCalGas and SDG&E can supplement the depth and detail of the testimony consistent with the scoping memo. This is the sole opportunity the applicants will have to make an affirmative showing on these issues. We will apply a very strict standard to all rebuttal testimony to ensure that any materials proposed as rebuttal are not data or argument more properly served as part of the initial direct testimony.

(a) Investment Planning

SoCalGas and SDG&E complain³ that the scoping memo's requirement to conduct a review of SoCalGas and SDG&E's investment planning practices is unnecessary. The applicants make references into the pre-served testimony of several witnesses. The completeness and adequacy of that testimony is not to be litigated by motion and ruling. The scoping memo directed SoCalGas and SDG&E to provide a full and complete response to specific concerns and invited the parties to examine these questions in detail. SoCalGas and SDG&E argue,

³..Motion, page 6, items listed as numbers 1, 2 and 3.

"the Scoping Memo in this proceeding overlooks the fact that SoCalGas and SDG&E prepared their testimony here in light of the Scoping Memo in the SCE proceeding." Perhaps they did, but the scoping memo seeks more depth of description and justification than is contained in the pre-served testimony. The applicants may choose to supplement the testimony, or not by June 6, 2003, but they may not introduce evidence in support of the direct case later in the guise of rebuttal.

(b) Electric Resource Planning

SoCalGas and SDG&E are correct that the scoping memo inaccurately characterized the scope of the electric procurement Rulemaking, R. 01-10-024 when describing the scope of that proceeding as limited to short-term procurement. Nonetheless we must acknowledge and clarify an important distinction between the scope of the Rulemaking and the COS. It is within the scope of this proceeding to ensure that SDG&E has the appropriate tools, staff, as well as, the corporate policies and practices, in place to efficiently and competently perform the function of electric procurement. In contrast, the Rulemaking addresses the details of SDG&E's plans for the future, including (without modifying that proceeding's scope) the types of energy sources to be procured, the methods of procurement, (auctions, contracts, self-generation, etc.), and the adequacy of the forecasts of need and available resources. These are "from where?", "from whom?", and "how much?", questions. The COS is the proper forum to determine whether SDG&E is properly and competently organized, managed and equipped to answer those questions. This COS review includes the adequacy of the safeguards separating the confidential SDG&E utility energy requirements data, tools and staff, from unregulated affiliates such as Sempra Energy Trading.

(c) Land Management

SoCalGas and SDG&E complain⁴ that the scoping memo's requirement to conduct a review of SoCalGas and SDG&E's land-use and land management practices is redundant and duplicative of Rulemaking (R.) 03-03-015; and the rulemaking is not cited so as to properly distinguish the two proceedings. While acknowledging the rulemaking, we see no redundancy.

The difference in scope and depth of the two proceedings is evident in the language of the two scoping memos.

In these proceedings (A.02-12-027, et al), we announced our intention:

"to conduct a review of SoCalGas and SDG&E's land-use and land management practices, especially with respect to environmental impacts. use of utility lands for unregulated activities by SoCalGas and SDG&E, their affiliates or third parties. and incidental benefits to ratepayers and the community at large. To facilitate this review, I direct SoCalGas and SDG&E to file supplemental testimony to describe how they set priorities for land management. and if they place different priorities on different types of land (such as land related to electric or gas transmission assets versus other utility assets.) Testimony should include an inventory of all lands in rate base, and how these lands are used to maximize public benefit." (Emphasis added.)

In Rulemaking (R.) 03-03-015, the Commission was very specific in stating the nature and extent of its inquiry:

"The issues to be considered in this proceeding are:

- (1) The criteria for environmental acceptability in managing IOU (investor-owned utilities) assets. Possible examples include:
 - (a) Repowering to improve environmental performance

⁴ Motion, page 7, listed item number 5.

- (b) Management and appropriate sequestration of pollutants, wastes, effluents and other byproducts of electrical generation
 - (c) Remediation of hazardous materials at IOU facilities
 - (d) Management and restoration of habitat of applicable lands and waters
 - (e) Management of streamflows to the benefit of species and habitats
- (2) Reporting parameters the Commission should employ to assess the quality of environmental stewardship at these facilities.
 - (3) Could remediation of land presently without generation assets take place, with the ROR Rate of return increase being attributable to a facility at another location?
 - (4) What is the appropriate basis for assessing the capital and operation & maintenance cost comparison?
 - (5) How should local communities be involved in the site selection and remediation process?
 - (6) What should be the criteria for assessing whether a facility is experimental or will otherwise fit the criteria of section 454.3(c)? Can other technologies, e.g., transmission upgrades, be considered in this context?

In addition to the potential application of Section 454.3 described above, the Commission may wish to explore applying the authority granted it in Section 454.3 in the context of the new responsibility the Legislature and Governor have given it in Section 454.5 and Article 16, commencing with section 399.11 (the Renewable Portfolio Standard Program). The Commission, under the Renewable Portfolio Standard Program is required to increase, by 1 % each year, the proportion of electricity consumed in the state that is generated from renewable sources, provided certain conditions are met." (Emphasis added.)

In these proceedings we are concerned with the quality of the land-management and land-use practices of the utilities as a whole; are SoCalGas and

SDG&E "good and faithful stewards" of the lands they hold and include in rate base? In contrast, R. 03-03-015 will focus on § 454.3, the potential eligibility of the electric utilities for an enhanced return for the proper management of a specific sub-set of assets useable for environmentally friendly electric generation. Thus the rulemaking would exclude all non-generation lands and all gas utility lands, which are included in the scope of these proceedings.

In an electronic communication of April 14, 2003, SDG&E attorney Jeffrey M. Parrott made the following statements to ALJ Anne Simon, in R.03-03-015:

"SDG&E is reviewing its property holdings to determine which of them could feasibly" ... correspond to the three categories defined above [renewable resource development, improving land management practices, and research and demonstration projects]."
To do this SDG&E is developing minimum criteria characteristics that its property would need to meet to qualify for the inventory."

And later in the same message:

"Since this OIR is focused specifically on PUC Section 454.3 and the ROR increase utilities can obtain by taking certain actions related to generation assets, SDG&E believes its interpretation of the intent of the OIR is correct."

From this communication it is apparent that SDG&E appreciates the more narrow focus of the rulemaking on § 454.3. The argument that the initial scoping memo in these proceedings will promote redundancy lacks merit and we will not modify it in this area.

(d) Gas Resource Plans

SoCalGas and SDG&E argue that the Scoping Memo erred in requiring them to supplement their testimony by serving Resource Plans in this proceeding as defined in D.02-11-073. They state that it is "perfectly clear" that the Commission did not require SoCalGas to file a resource plan in this COS

application because the mandate applies only to SDG&E.⁵ Although the cited portion of that decision applies only to SDG&E, in its discussion of SoCalGas' local transmission system expansion policy⁶ the Commission clearly directed SoCalGas to present a detailed Resource Plan in the next GRC or BCAP. The utilities acknowledge this in their Motion; they submit that the language allows SoCalGas the flexibility to choose the forum. We disagree. The Commission did not allow the utilities the flexibility to file a Resource Plan wherever they choose. D.02-1-073 directs the utilities to address the Resource Plans in the "next" proceeding, which is this COS proceeding.⁷

The utilities would prefer to address their resource plan in the BCAP because they are concerned that (1) review of resource plans will add to the burden of deciding this case in timely fashion, and (2) consideration of cost allocation based on Long-Run Marginal Cost (LRMC) principles as part of long-term resource plans will be an inefficient duplication of issues. We have stated our intent to hear in this case only issues that belong in this proceeding. In the last SoCalGas/SDG&E BCAP Decision, D.00-04-060, the Commission discussed the ever-decreasing resource plan investments since adoption of LRMC methodology.⁸ In their current BCAP Applications, both utilities filed testimony based on embedded cost allocation as well as LRMC allocation.

⁵ D.02-11-073, Ordering Paragraph 7, "SDG&E shall address its gas resource plan in the next appropriate proceeding to ensure that its system is adequate to meet the demands for capacity and to meet the newly adopted reliability standards."

⁶ D.02-11-073, p. 38.

⁷ The BCAP has been delayed several times over the past two years and is currently scheduled to follow these proceedings.

⁸ D.00-04-060, B. Resource Plan, Table 4, p. 40.

TURN's response only addresses the issue of the long-range gas resource plan, arguing that SoCalGas and SDG&E should be required to file as directed in the scoping memo. TURN cites D.97-04-082 and D.00-04-060 where the Commission has already directed the utilities to file these plans in a general rate proceeding such as these cost of service applications.

This COS proceeding is the correct proceeding to address the Resource Plans of both utilities. We direct the utilities to file detailed 15 year resource plans to be considered in this proceeding so that a revenue requirement for those investments can be established. The plans and revenue requirement approved by the Commission in this proceeding can be incorporated into the BCAP proceeding for allocation by whichever cost methodology is adopted by the Commission in that proceeding. There will be no duplication of issues in the COS and the subsequent BCAPs.

(e) Justification of the Request for Incentives

The scoping memo directed the applicants to present a prima facie case as to why the incentive mechanisms they request are needed beyond the benefits achievable from revenue balancing accounts designed to assure the recovery of the authorized (non energy commodity-related) revenue requirements. The utilities argue that they have detailed witness testimony on the functional operations of the mechanisms, but that testimony largely presumes the continued existence (or modified existence) of the incentives currently in place and does not significantly address the need for the mechanisms, and the ratepayer benefits, that warrant the imposition of the additional associated costs of the incentives. In the interest of meeting their burden of proof, the utilities must address these concerns.

(f) Section 739.1

SDG&E asserts that its “margin per customer” mechanism will address the statutory requirement that as an electrical corporation SDG&E must not materially over- or under-collect from customers. This is only true if the Commission decides to adopt the proposed mechanism. If it does not, the Commission will be required, and is prepared, to take any necessary ratesetting steps to ensure compliance with § 739.1 and establish a mechanism to prevent unintended over- or under-collections of the revenue requirements adopted in these proceedings. Therefore we will delete the requirement for supplemental testimony on this issue.

(g) Diversity

Subsequent to issuance of the April 2nd Scoping Memo SoCalGas and SDG&E filed the requested testimony on Diversity. No further discussion is needed.

IT IS RULED that:

1. The modifications to the scope of these proceedings are as set forth in the foregoing discussion.
 - (a) There is a clarification to the scoping memo for a review of SoCalGas and SDG&E's electric resource planning. The determination of whether SDG&E has the appropriate tools, staff, and corporate policies and practices in place to efficiently and competently perform the function of electric procurement is within the scope of the consolidated proceedings.
 - (b) There is no modification to the scoping memo for a review of SoCalGas and SDG&E's land-use and land management practices; it remains within the scope of the consolidated proceedings.

- (c) There is no modification to the scoping memo for Gas resource Plans; they remain within the scope of the consolidated proceedings.
- (d) There is no modification to the scoping memo for justification of incentives; it remains within the scope of the consolidated proceedings.
- (e) The requirement for further testimony related to Pub. Util. Code § 739.1 is withdrawn.
- (f) There is no modification to the scoping memo for Diversity. SoCalGas and SDG&E have filed supplemental testimony addressing this issue.

2. The modifications to the schedule for these proceedings are set forth in Appendix A. SoCalGas and SDG&E shall file their supplemental testimony by June 16, 2003.

3. Parties shall file any further comments on interim rate relief, as discussed herein, on June 3, 2003.

4. As discussed herein, the applicants may supplement their testimony by June 16, 2003, but they may not later introduce evidence in support of the direct case in the guise of rebuttal.

Dated May 22, 2003, at San Francisco, California.

/s/ CARL WOOD

CARL WOOD
Commissioner

/s/ DOUGLAS M. LONG

DOUGLAS M. LONG
Administrative Law Judge

APPENDIX A PROCEDURAL SCHEDULE

	Scoping Memo	Motion's Proposal	Revised Schedule
Prior Events	Date		
SoCalGas and SDG&E filed applications & Protests filed	12/ 20/ 2002 12/ 27/ 2002		
Second Prehearing Conference	3/ 14/ 2003		
Cost of Service 2004			
SoCalGas and SDG&E serve supplemental ORA serves Cost of Service testimony	6/ 16/ 2003 8/ 8/ 2003	4/ 18/ 2003 7/ 3/ 2003	 8/ 8/ 2003
Intervenor Testimony	9/ 12/ 2003	8/ 1/ 2003	9/ 5/ 2003
Rebuttal and Up-Date	10/ 3/ 2003	8/ 19/ 2003	9/ 19/ 2003
Third Prehearing Conference	10/ 7/ 2003	8/ 22/ 2003	9/ 26/ 2003
Evidentiary Hearings Begin	10/ 14/ 2003	8/ 25/ 2003	9/ 29/ 2003
Evidentiary Hearings End	11/ 7/ 2003	9/ 22/ 2003	10/ 24/ 2003
Comparison Exhibit	11/ 14/ 2003	9/ 29/ 2003	10/ 31/ 2003
Incentive Mechanism for 2004			
ORA Serves Testimony	10/ 6/ 2003	defer	defer
Intervenor Testimony	10/ 14/ 2003		
Rebuttal Testimony	10/ 27/ 2003		
Evidentiary Hearings Begin	11/ 12/ 2003		
Evidentiary Hearings End	11/ 14/ 2003		
Post Hearing Schedule for Briefs & Decision			
Concurrent Opening Briefs filed and served	12/ 5/ 2003	10/ 22/ 2003	11/ 12/ 2003
Concurrent Reply Briefs filed and served	1/ 5/ 2004	11/ 14/ 2003	12/ 5/ 2003

(END OF ATTACHMENT A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Ruling Clarifying The Scoping Memo And Modifying The Schedule on all parties of record in this proceeding or their attorneys of record.

Dated May 22, 2003, at San Francisco, California.

/s/ CLAIRE JOHNSON

Claire Johnson

N O T I C E

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